

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
FOREVER 21, INC., *et al.*,¹) Chapter 11
Debtors.) Case No. 19-12122 (_____
) (Joint Administration Requested)
)

**DECLARATION OF CHRISTIAN
TEMPKE IN SUPPORT OF THE DEBTORS'
MOTION SEEKING ENTRY OF INTERIM AND
FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO
OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING THE
DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND
PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS,
(IV) GRANTING ADEQUATE PROTECTION TO THE PREPETITION
ABL SECURED PARTIES, (V) MODIFYING THE AUTOMATIC STAY,
(VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF**

I, Christian Tempke, hereby declare as follows under penalty of perjury that the following is true and correct to the best of my knowledge, information, and belief:

1. I submit this declaration (this "Declaration") in support of the *Debtors' Motion Seeking Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition ABL Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Forever 21, Inc. (4795); Alameda Holdings, LLC (2379); Forever 21 International Holdings, Inc. (4904); Forever 21 Logistics, LLC (1956); Forever 21 Real Estate Holdings, LLC (4224); Forever 21 Retail, Inc. (7150); Innovative Brand Partners, LLC (7248); and Riley Rose, LLC (6928). The location of the Debtors' service address is: 3880 N. Mission Road, Los Angeles, California 90031.

Hearing, and (VII) Granting Related Relief (the “Motion”),² filed contemporaneously herewith, which, as set forth in the Motion, seeks approval of (a) the proposed postpetition debtor-in-possession financing (the “DIP Financing”), consisting of (i) an up to \$275 million senior secured superpriority ABL revolving credit facility (the “DIP ABL Facility”), which includes a \$75 million sublimit for the issuance of letters of credit issued under the Prepetition ABL Facility, a “creeping roll up” of the Prepetition ABL Facility, and a full-roll up of any obligations remaining under the Prepetition ABL Facility upon entry of a Final Order and (ii) a \$75 million senior secured superpriority term loan credit facility, reflecting \$75 million of new money financing (the “DIP Term Loan Facility” and, together with the DIP ABL Facility, the “DIP Facilities”) and (b) the postpetition use of Cash Collateral.³

2. Based on my professional experience, and as explained below, the DIP Facilities: (a) are each the product of arm’s-length, good-faith negotiation processes; (b) are collectively and individually, in light of the marketing process described below, the best presently available postpetition financing option for the Debtors; and (c) each contain reasonable financial terms and conditions under the circumstances.

3. The statements in this Declaration are, except where specifically noted, based on my personal knowledge of information that I have obtained from the Debtors and their advisors, the Debtors’ books and records, information learned from my review of relevant documents related thereto, and employees of Lazard Frères & Co. LLC (“Lazard”) working directly with me and under my supervision. Specifically, Lazard has been one of the principal advisors for the Debtors

² Capitalized terms used but not defined herein shall have the meanings given to such terms in the Motion or the *Declaration of Jonathan Goulding, Chief Restructuring Officer of Forever 21, Inc., in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith, as applicable.

³ Any description of the proposed terms of the DIP Facilities herein or in the Motion is qualified in its entirety by reference to the DIP Agreements.

since July 2019, and, in that capacity, I have been directly involved in the matters leading up to the Debtors' chapter 11 filings. I am not being specifically compensated for this testimony other than through payments to be received by Lazard (including certain financing fees) as a professional whose retention the Debtors are seeking to obtain this Court's approval of pursuant to an application to be filed with the Court at a later date. I am over the age of 18 years and authorized to submit this declaration on behalf of the Debtors. If I were called upon to testify, I could and would competently testify to the facts set forth herein.

Background and Qualifications

4. I am a Director in the Restructuring Group of Lazard, the primary U.S. operating subsidiary of a preeminent international financial advisory and asset management firm founded in 1848. Lazard is registered as a broker-dealer with the United States Securities and Exchange Commission and the Financial Industry Regulatory Authority. Lazard is a full-service independent investment banking firm providing financial advisory services, including with respect to mergers and acquisitions, capital raising, and restructuring advice, across a broad range of industries. Together with its predecessors and affiliates, Lazard has been advising clients around the world for more than 150 years. Lazard and its professionals have considerable expertise and experience in providing investment banking and financial advisory services to financially distressed companies and to creditors, equity holders, and other constituencies in reorganization proceedings and complex financial restructurings, both in and out of court. Since 1990, Lazard professionals have been involved in over 500 restructurings, representing well over \$1 trillion in debtor assets.

5. I have been employed at Lazard since 2007 and specialize in advising public and private companies and creditor groups in complex financial restructurings, recapitalizations, capital raises, and sale transactions. Specifically, I have represented companies and creditor groups in connection with raising capital in the bankruptcy context, including assisting chapter 11

debtors in obtaining and negotiating the terms of debtor-in-possession financing, exit financing loans, and equity rights offerings. During the course of my career, I have been involved in a variety of restructuring and recapitalization engagements, including Pacific Gas and Electric Company, Toys“R”Us, Gymboree, Jones Energy, Westinghouse, LINN Energy, Stone Energy, RCS Capital, Millennium Health, RadioShack, Chassix, Momentive, Quiznos, OGX, Eastman Kodak Company, Spanish Broadcasting, Lehman Brothers, iStar Financial, U.S. Concrete, Evraz Group, Plastech Engineered Products, and Wellman, among others. Additionally, I have submitted declarations and provided expert testimony related to those matters in a number of chapter 11 cases.

6. I have a B.A. in economics from Northwestern University. I hold a Series 79 Investment Banking Representative license and I am a member of the Turnaround Management Association.

Lazard Retention

7. In July 2019, the Debtors engaged Lazard (via counsel) to act as the Debtors' investment banker with respect to any amendment, restructuring transaction, and/or financing transaction. Since the beginning of its engagement, Lazard has worked closely with the Debtors' management and other professionals retained by the Debtors with respect to the Debtors' restructuring efforts and has become well-acquainted with the Debtors' capital structure, financing needs, and business operations.

The Debtors' Prepetition Capital Structure

8. As noted in the First Day Declaration, as of the Petition Date, the Debtors have approximately \$227.7 million in total funded debt obligations, consisting of approximately \$194.5 million outstanding under the Prepetition ABL Facility (plus approximately \$59 million of outstanding letters of credit), \$20.0 million outstanding under the Term Loan Agreements, and \$13.2 million outstanding under the Praxton Agreement.

9. As noted in the First Day Declaration, the obligations under the Prepetition ABL Facility are secured by all or substantially all of each of the Debtors' working capital assets, including, without limitation, by a first priority lien on the Debtors' accounts (including receivables), inventory, deposit accounts, security accounts, cash and cash equivalents, but excluding the Debtors' intellectual properties and certain of the Debtors' real estate assets.⁴ I also understand that each non-borrower Debtor has guaranteed all obligations under the Prepetition ABL Facility.⁵

The Debtors' Efforts to Secure Out-of-Court Financing

10. Beginning in July 2019, the Debtors, with the assistance of Lazard, evaluated potential funding alternatives necessary to obtain liquidity needed for purchasing inventory and implementing the Debtors' go-forward business plan reflecting the Debtors' turnaround initiatives. The Debtors contacted 25 parties regarding potential financing, including an out-of-court first-in-last-out term loan (a "FILO Loan"). Of the 25 contacted parties, 22 parties signed non-disclosure agreements ("NDAs") and were granted data room access (two of them had existing NDAs with the Company). As a result of these efforts, the Debtors received four financing offers. After further review of the ongoing turnaround initiative efforts, however, the Debtors decided that a FILO Loan would not put the Debtors' on a value-maximizing long-term path for success without the tools made available in connection with a chapter 11 process (including, most significantly, the ability to reject burdensome domestic and international leases). Therefore, the Debtors focused on preparing for a potential chapter 11 filing, including finding postpetition financing.

⁴ See First Day Decl. ¶ 42.

⁵ See *id.*

The DIP Marketing Process

11. In particular, the Debtors prioritized two potential DIP financing facilities, specifically, (a) a senior, asset-based revolving facility with a similar borrowing base structure to the Prepetition ABL Facility, combined with (b) a junior facility to provide incremental liquidity to the Debtors during the chapter 11 cases and structured similarly to the FILO Loan. With this in mind, in late August, Lazard (at the direction of the Debtors) began reaching out to parties with the requisite experience and sophistication to participate in such facilities. In my experience, potential providers of a DIP asset-based revolving facility and term loan facility are generally traditional banks and credit funds among other financial institutions, who are familiar with the chapter 11 process and who can move quickly to close a transaction. To avoid disruptive news coverage, Lazard initially limited its outreach to only 13 potential lenders to solicit proposals for DIP financing (including the Prepetition ABL Agent). Several of those parties were already under an NDA in connection with the request for proposals regarding the potential FILO Loan. Further, several of those parties were already familiar with the Debtors' business as they had performed diligence and, in many instances, provided proposals for financing. Approximately one week after the initial DIP financing outreach, with the risk of disruptive news coverage becoming moot, Lazard expanded its outreach and solicited proposals from 18 additional parties. Many of those parties were already familiar with the Debtors and the collateral available to secure a DIP facility, and had largely indicated an interest to participate in a potential DIP Facility.

12. In total, more than 30 parties were contacted and more than 30 NDAs were executed. All parties subject to NDAs were granted access to a virtual data room containing detailed information regarding the Debtors and received access to non-public information. As a result of these efforts, several parties engaged in negotiations with the Debtors and their advisors and discussed the terms of potential DIP financing. Ultimately, the Debtors received one proposal for

an ABL facility and eight proposals for a junior term loan facility. No party was willing to provide financing to the Debtors on an unsecured or administrative priority basis. Additionally, the Debtors solicited interest for a “unitranche” DIP facility to ensure competitive tension with the potential lender for the DIP ABL facility; interest in such a facility, however, was very limited.

13. For nearly three weeks, the Debtors and their advisors engaged in round-the-clock negotiations with several parties who provided term sheets in order to obtain the best possible financing for the Debtors. Specifically, the Debtors exchanged drafts of commitment papers and long-form term sheets with several parties. These documents were heavily negotiated over the course of the past three weeks. Furthermore, to ensure the Debtors received the best terms, several potential financing parties met with members of the management team to enhance their understanding of the Debtors and their operations. As negotiations went on, the Debtors actively sought out a deal that would offer the most liquidity to fund these chapter 11 cases while simultaneously providing flexibility to implement the terms of their restructuring, especially with respect to the case milestones required by such counterparties.

14. As a result, in the weeks leading up to the Petition Date, it became clear to the Debtors that their best path to financing their chapter 11 cases was through a financing from both the Prepetition ABL Secured Parties and the DIP Term Lenders. As noted in the Motion, the DIP Facilities contemplate postpetition financing in the form of (a) a \$275 million senior secured superpriority ABL revolving credit facility, which includes a \$75 million sublimit for letters of credit and a “roll up” of the Prepetition ABL Facility, and (b) a \$75 million senior secured superpriority term loan credit facility, reflecting \$75 million of new money financing. Because the Prepetition ABL Facility is being “rolled up” into the DIP ABL Facility and the DIP ABL Facility is senior in priority to the DIP Term Loan Facility (with respect to the collateral securing

the DIP ABL Facility), the DIP Facilities do not effectuate any priming of the Prepetition ABL Secured Parties' liens on their collateral under the Prepetition ABL Facility. Accordingly, the Debtors avoid the need to engage in a priming fight at the outset of these chapter 11 cases. The Prepetition ABL Secured Parties have also consented to the Debtors' use of their Cash Collateral in connection with the DIP Facilities.

15. The DIP ABL Facility contemplates the roll-up of letters of credit that were issued under the Prepetition ABL Facility, a "creeping roll up" of the Prepetition ABL Facility under the Interim Order, and a roll-up of any remaining obligations under the Prepetition ABL Facility upon entry of the Final Order. Specifically, the letters of credit currently outstanding under the Prepetition ABL Facility will be rolled up upon entry of the Interim Order, the Debtors' postpetition cash receipts will be used to pay down the Prepetition ABL Facility on a dollar-for-dollar basis, and the Debtors will then make borrowings under the DIP ABL Facility to support their ongoing restructuring and operational needs. If there are any remaining amounts outstanding on the Prepetition ABL Facility as of the entry of the Final Order, they will be "rolled" into the DIP ABL Facility. In my experience, such "roll-ups" are not unusual in the distressed retail space, and in this case the roll-up of the Prepetition ABL Facility into the DIP ABL Facility provides certain benefits to the Debtors and their estates. Among other things, the DIP ABL Facility bears interest at a lower rate than the non-default rate of interest under the Prepetition ABL Facility, and because the Debtors were in default under the Prepetition ABL Facility prior to the Petition Date, should the Prepetition ABL Obligations remain outstanding, interest would likely accrue at the higher default rate. Moreover, the letters of credit that were issued under the Prepetition ABL Facility will be deemed to be issued under the DIP ABL Facility, which avoids the need for the Debtors to cash collateralize or otherwise replace, backstop, or adequately protect those

obligations at a time when liquidity is at a premium. In addition, because all of the Prepetition ABL Lenders have agreed to support the Debtors by participating in the DIP ABL Facility and to consent to the use of their cash collateral in connection with this post-petition financing, the Debtors will be able to avoid litigation at the outset of these cases when their efforts are focused on working toward a consensual and constructive reorganization to maximize the recoveries to all creditors. Given these considerations as well as the Debtors' liquidity concerns and the case timeline, I believe that reducing litigation and entering the chapter 11 cases with collaboration between and among the Prepetition ABL Secured Parties and the Debtors is critical to a smooth transition into chapter 11.

16. In light of the marketing process described herein, I believe that the DIP Facilities represent the best available financing package that, collectively, (a) provides the Debtors liquidity to fund these chapter 11 cases, while simultaneously providing flexibility to implement the restructuring; (b) give the Debtors a timeline to complete their restructuring, which the Debtors believe is reasonable under the circumstances; and (c) forego the need for a "priming" fight with the Prepetition ABL Secured Parties. As detailed below, I also believe that the economic terms of the proposed DIP Facilities are competitive and within the range of other postpetition financing facilities that I have seen or been involved with in recent years.

17. I further believe the DIP Facilities are the product of arm's-length, good-faith negotiations with the DIP Lenders. Based on the results of the marketing process described herein and my conversations with potential lenders, I do not believe that workable alternative sources of financing with terms better than those of the DIP Facilities are presently available to the Debtors.

The Terms of the DIP Financings Are Reasonable.

18. I understand that the Debtors have agreed, subject to Court approval, to pay certain fees to each of the DIP Agents. In particular, as noted in the DIP Motion, the Debtors have agreed to pay fees consisting of the following:⁶

- a. Pursuant to the DIP ABL Fee Letters, which have been filed under seal with unredacted versions to be provided to the Court, the U.S. Trustee and the Committee (if appointed), the Debtors have agreed to pay certain fees to the DIP ABL Agent and the DIP ABL Lenders; and
- b. Pursuant to the DIP Term Loan Fee Letters, which have been filed under seal with unredacted versions to be provided to the Court, the U.S. Trustee and the Committee (if appointed), the Debtors have agreed to pay certain fees to the DIP ABL Agent and the DIP ABL Lenders.

19. These fees were the subject of negotiation between the Debtors and the DIP Agents, are an integral component of the overall terms of the DIP Facilities, and were required by the applicable DIP Agents as consideration for the extension of postpetition financing. Under the Debtors' circumstances, and in light of the marketing process described herein, I believe that the fees reflected in the DIP Fee Letters are customary and consistent with the range of fees I have seen in similar financings. I understand that the fees negotiated with the DIP Agents have been redacted pending approval of the *Debtors' Motion for Entry of an Order Authorizing the Debtors to Redact Certain Portions of the Fee Letters Related to the DIP Facilities*, filed contemporaneously herewith. By their terms, the DIP Fee Letters require the Debtors to keep the description of fees contained therein confidential. I understand that the DIP Agent and the DIP Lenders treat this information as highly sensitive and confidential. It is my understanding that it is of critical importance to the DIP Agents and the DIP Lenders that the details of the fee structures

⁶ Capitalized terms used but not otherwise defined in this paragraph shall have the meaning ascribed to them in the DIP Intercreditor Agreement.

set forth in the DIP Fee Letters be kept confidential so that competitors may not use the information contained therein to gain a strategic advantage over the DIP Agents and DIP Lenders in the marketplace.

20. Also as described previously, the marketing process did not produce an alternative financing option with terms superior to those provided in these DIP Facilities. In light of the marketing and negotiation process described herein, it is my view that the proposed DIP Facilities represent the best presently available financing option for the Debtors.

Conclusion

21. In sum, based on my experience and my involvement in assisting the Debtors with the marketing and negotiation of the DIP Facilities in this matter, it is my view that the DIP Facilities represent the best presently available postpetition financing option for the Debtors and contain terms that are reasonable given the circumstances. Further, I believe that the negotiation process was conducted at arm's-length and in good faith. The Debtors' marketing efforts, with the assistance of Lazard, lead me to believe that there is no other potential financing option that would satisfy the Debtors' objectives on better terms.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true correct.

Dated: September 30, 2019
New York, New York

/s/ Christian Tempke
Christian Tempke
Director
Lazard Frères & Co. LLC
